

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

MARC ANTHONY BROWN,  
(TDCJ-CID #679706)  
Plaintiff,

vs.

OFFICERS OF THE MASONS AND  
EASTERN STARS OF EAST TEXAS-  
EASTERN DIVISION

Defendants.

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CIVIL ACTION H-14-2210

**MEMORANDUM ON DISMISSAL**

Marc Anthony Brown, a Texas Department of Criminal Justice inmate, sued in July 2014, alleging civil rights violations resulting from verbal harassment. Brown seeks leave to proceed as a pauper. Brown, proceeding *pro se*, sues Officers of the Masons and Eastern Stars of East Texas-Eastern Division.

The threshold issue is whether Brown's claims should be dismissed as barred by the three-strikes provision of 28 U.S.C. § 1915(g). The court concludes that Brown's claims are barred and should be dismissed for the reasons stated below.

**I. Plaintiff's Allegations**

Brown contends that he is being harassed because of his religious beliefs. Brown states that he does not know when the violation of his civil rights took place. He claims that this harassment began in 1995 and continued through 2013. Brown sought protective custody but was denied because of his disciplinary history. Brown apparently seeks placement in protective custody.

**II. Analysis**

A prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Brown's litigation history reveals that he has previously submitted abusive and scurrilous filings in federal court. Prior to filing this action, he had three suits dismissed as frivolous. *Brown v. U.S. Government*, 6:13-0382 (E.D. Tex.)(dismissed as frivolous and for failure to state a claim upon which relief may be granted on August 14, 2013); *Brown v. NASA Sam Houston Space Center*, 4:10-3598 (S.D. Tex.)(dismissed for failure to state a claim on October 26, 2010); and *Brown v. Owner of FM Radio Station 97.9 The Box*, 4:10-3870 (S.D. Tex.)(dismissed as frivolous on October 19, 2010).

Brown seeks to overcome the three-strikes bar by alleging that he is under imminent danger of serious physical injury. Brown provides no evidence that he is in imminent danger of any serious physical injury. Instead, he alleges that he has filed a request for protective custody, and it was denied.

A speculative possibility of danger does not suffice to show Brown is in imminent danger. To overcome the sanction bar imposed against him, Brown must show that he is actually in imminent danger at the time that he seeks to file his suit. *See Banos v. O'Guin*, 144 F.3d 883, 884-85 (5th Cir. 1998) (per curiam); *Choyce v. Dominguez*, 160 F.3d 1068, 1070 (5th Cir. 1998) (per curiam opinion following *Banos*). Established Fifth Circuit precedent requires that civil rights claimants must state specific facts, not conclusory allegations. *Brinkmann v. Johnston*, 793 F.2d 111, 113 (5th Cir. 1986); *see also Baker v. Putnal*, 75 F.3d 190, 195 (5th Cir. 1996). He did not establish that he faced imminent danger of serious physical injury at the time he filed this civil rights lawsuit.

Brown is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

### III. Conclusion

Brown's motion to proceed as a pauper, (Docket Entry No. 2), is DENIED. His complaint is DISMISSED. 28 U.S.C. § 1915(g).<sup>1</sup> All pending motions are denied. Brown is warned that continued frivolous filings may result in the imposition of sanctions.

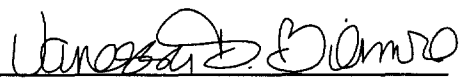
The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159;

(2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and

(3) the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, on August 4, 2014.

  
VANESSA D. GILMORE  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>

In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1998), the Fifth Circuit barred an inmate from proceeding further under the statute, except for cases involving an imminent danger of serious physical injury, and dismissed all of Adepegba's *in forma pauperis* appeals pending in that court. The Fifth Circuit noted that the inmate could resume any claims dismissed under section 1915(g), if he decided to pursue them, under the fee provisions of 28 U.S.C. §§ 1911-14 applicable to everyone else.